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Approved For Release 2005/11/21 : CIA-RDP77M00144R000600110031-3

## ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM:

Legislative Counsel  
7D35 HQ

EXTENSION

NO.

DATE

7 August 1975

STAT

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S  
INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. OGCR  
Attn: [redacted]  
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2. 100 Mago

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Frank:

The attached letter represents the Administration's position on S. 1341 which would establish a 200-mile Marine Pollution Control Zone. Please let me have your opinion on how we should comment on the position by 20 August. Thank you.

STAT

Assistant Legislative Counsel

*Agree with exec branch position on foreign reaction.*

STAT

FORM  
3-62610 USE PREVIOUS  
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EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

July 31, 1975

LEGISLATIVE REFERRAL MEMORANDUM

To: Legislative Liaison Officer  
Department of Defense National Security Council  
Department of Commerce Council on Environmental Quality  
Department of the Interior Environmental Protection Agency  
Department of Justice Central Intelligence Agency  
Department of Transportation National Science Foundation  
Department of the Treasury Agency for International  
Development

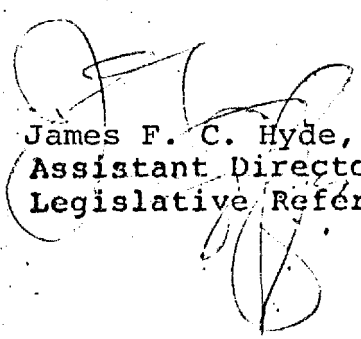
Subject: Proposed report of the NSC Interagency Task Force on  
the Law of the Sea on S. 1341, a bill "To establish  
a 200-mile Marine Pollution Control Zone."

The Office of Management and Budget would appreciate  
receiving the views of your agency on the above subject  
before advising on its relationship to the program of the  
President, in accordance with OMB Circular A-19.

(xxx) To permit expeditious handling, it is requested  
that your reply be made within 30 days.

( ) Special circumstances require priority treatment  
and accordingly your views are requested by

Questions should be referred to Mike Usnick  
( 103 x4580 ) or to George R. Gilbert ( 103 x4710 ),  
the legislative analyst in this office.

  
James F. C. Hyde, Jr. for  
Assistant Director for  
Legislative Reference

Enclosures



DEPARTMENT OF STATE

Washington, D.C. 20520

Honorable John Sparkman  
Chairman, Committee on  
Foreign Relations  
United States Senate

Dear Mr. Chairman:

This is in response to your letter of April 4, requesting the views of the Executive Branch on S. 1341, a bill to establish a 200-mile Marine Pollution Control zone. This request has been referred to the NSC Interagency Task Force on the Law of the Sea, in accordance with Executive Branch procedure on legislation directly related to U.S. efforts in the Third U.N. Law of the Sea Conference.

S. 1341 would amend the Federal Water Pollution Control Act Amendments of 1972, and the Ports and Waterways Safety Act of 1972, to extend the authority conferred by those Acts to the regulation and control of vessel construction, operation, and discharges within a 197 nautical mile pollution control zone. All vessels of whatever flag otherwise subject to those Acts would equally be subject to their application and enforcement within this zone. S. 1341 would further authorize the Administrator of EPA to promulgate standards of performance for effluent reduction embodying the best available demonstrated control technology. Rules and regulations promulgated by the Secretary of the Department in which the Coast Guard is operating would be designed to meet such standards of performance, and the bill would provide for consultation and review by the Administrator and the Secretary concerning the relationship between such rules and regulations and the standards of performance in instances where the Administrator deemed it necessary. Finally, S. 1341 would direct the Secretary to review rules and regulations already in force in consultation with the Administrator. It would make explicit the authority of the Secretary and Administrator to establish more stringent rules and regulations for vessels in the coastwise trade and to promulgate regulations more stringent than those internationally established for all vessels operating in navigable waters.

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The protection of the marine environment is and must be an important objective for the United States, both domestically and internationally. All concerned agencies recognize the vital importance of adequate measures to protect the marine environment; and the United States will continue to make the strongest possible efforts to promote adequate international responses to pollution problems. However, unilateral assertions of jurisdiction over vessel pollution on the high seas, such as those contained in S. 1341, are contrary both to international law and to United States international interests. Thus we strongly oppose enactment of this legislation.

A unilateral assertion of rights to establish pollution control standards for foreign flag vessels on the high seas would be a clear violation of both customary and conventional international law. The 1958 Convention on the High Seas, which codified international law, clearly provides that vessels on the high seas are subject only to the jurisdiction of the flag state except for limited and extraordinary circumstances such as piracy. We have consistently opposed, and refused to recognize, unilateral attempts in other countries to control foreign vessels on the high seas.

In addition to our general commitment to the rule of law, the United States has a significant interest in the continued freedom of navigation on the high seas, both for strategic and economic reasons. Unilateral environmental standard setting by the United States would provide a clear precedent for other coastal states to take such unilateral actions either for environmental or for other purposes. Enactment of the proposed legislation would clearly prejudice the United States' ability to effectively protest such actions of other states harmful to U.S. navigational interests.

The United States has consistently sought international responses to marine pollution problems, both in the Law of the Sea Conference and elsewhere. Reliance on internationally agreed environmental standards on the high seas, enforced through internationally agreed arrangements, avoids the potential for serious injury to our navigational and strategic interests which could result from a patchwork of broad national claims to jurisdiction over vessels on the world's oceans. To date, the results have not always been as effective as the United States desired, but we do believe that our

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efforts have produced significant additional environmental protection.

Our international efforts such as the negotiation of the 1973 Convention on the Prevention of Pollution from Ships and our continuing work in the Intergovernmental Maritime Consultative Organization (IMCO) provide protection not only for the U.S. coastline and adjacent areas but for all of the world's oceans. Unilateral claims by the U.S. could undercut these efforts.

The 1973 International Convention on the Prevention of Pollution from Ships is a major step forward in the development of international law governing pollution from ships. The Convention contains rigid pollution prevention requirements. It provides that strict international design and equipment standards to prevent pollution will be imposed on all vessels. In addition to establishing effective discharge, construction and equipment standards to control pollution from ships, the 1973 Convention strengthens the flag state duty to prosecute violations by its flag vessels. Significantly, the 1973 Convention contains provisions for accelerated amendment procedures which allow the technical provisions to be updated without the traditional cumbersome treaty amendment process. This feature will facilitate the timely adoption of the work product of the recently formed IMCO Marine Environment Protection Committee (MEPC), including measures for the minimization of accidental spills and improvement of regulatory provisions. Such implementation of the multilateral decisions of the IMCO Technical Committee's experts, including those of the MEPC, through the rapid amendment procedure, is preferred to unilateral action by individual states. Senator Muskie, in introducing S. 1341, indicated his belief that many countries are not interested in strict standards for pollution control. If that is the case, then we must redouble our international efforts, not weaken them by unilateral action, or we will lose the opportunity to provide global protection for the marine environment, a goal continually stressed by environmentalists both in government and in the public.

It must clearly be understood that international standards are not inconsistent with the exercise of existing authority under domestic and international law to protect U.S. internal and territorial waters. Neither the 1973 Convention nor any other U.S. efforts in the international field prevent or inhibit the use of our existing right to establish stricter standards in the territorial sea and in ports. A consistent

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and important aspect of our international efforts has been to protect that authority and we have been consistently successful in doing so.

For the Law of the Sea Conference the U.S. has worked to achieve significant environmental advances in the legal regime concerning vessel source pollution. We have supported obligations on all flag states to comply at a minimum with international standards and to take enforcement action against their vessels when furnished evidence of violations. These duties would be subject to binding third party dispute settlement. However, recognizing the futility of exclusive reliance on flag states, we support a comprehensive vessel pollution enforcement system of complimentary port state and coastal state rights and duties -- including a right to prosecute vessels in port for all violations, regardless of location, of the IMCO discharge standards. Although no final consensus has emerged, there has been progress towards acceptance of these principles.

Thus we are working in the Law of the Sea Conference both to preserve existing rights in ports and territorial seas and to create a viable enforcement system for all violations. Unilateral action now by the United States, through passage of S. 1341 or of similar legislation, could jeopardize the efforts recently underway, and render international agreement or pollution control in the Law of the Sea Conference impossible. The result would be proliferation of national claims which would not provide additional environmental protection in most areas, could remove any impetus for international action, and provide a serious potential for interference with navigation.

We strongly believe that it would be far better to allow the international Law of the Sea negotiations to be completed.

For the reasons indicated above, the Executive Branch strongly opposes the passage of this legislation.

S. 1341 also contains provisions which would alter the arrangements within the Executive Branch for the promulgation of rules and regulations regarding marine pollution. However, we do not believe that it would be useful or appropriate to comment on these other aspects of S. 1341 at this time.

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The Office of Management and Budget advises that from the standpoint of the Administration's program, there is no objection to the submission of this report.

Sincerely

John Norton Moore  
Chairman, NSC Interagency Task  
Force on the Law of the Sea  
and Deputy Special Representative  
of the President for the Law  
of the Sea Conference